



STATE OF CALIFORNIA
FRANCHISE TAX BOARD – Legal Department
P. O. Box 1720
Rancho Cordova, CA 95741-1720

JOHN CHIANG
Chair

BETTY T. YEE
Member

MICHAEL C. GENEST
Member

August 23, 2007
Information Letter 2007-2

RE: *****

Dear *****:

This letter is in response to your inquiry as set forth in correspondence dated *****. That letter asked if a taxpayer may properly bring suit against the Franchise Tax Board (FTB) after a claim for refund is denied, or if the taxpayer must first exhaust his administrative remedies by appealing the denial to the State Board of Equalization. The answer to your inquiry is two pronged.

First, Revenue and Taxation Code¹ section 19382 allows a taxpayer to bring an action for refund after the denial of such a claim by the FTB. There is no condition precedent to that filing other than the claim has been denied or deemed denied pursuant to section 19331.

Second, section 19717 allows for recovery of reasonable litigations costs, including attorney fees, for a prevailing party in the case of an action in the courts of California. However, this provision is limited to cases where the prevailing party has exhausted all administrative remedies available, including an appeal pursuant to section 19324 to the State Board of Equalization. Thus, if a taxpayer chooses to pursue an action in court prior to exhausting the available administrative remedies, the taxpayer will be precluded from an award of litigation costs under the provisions of section 19717.

I hope the above has addressed your questions. If you have any further inquiries, please feel free to contact me at the phone number listed below.

Suzanne L. Small
Tax Counsel III
Telephone: (916) 845-3066
FAX: (916) 843-2122

¹ All references to statute herein will be to the Revenue and Taxation Code unless otherwise indicated.